D.T.E. 00-54-A May 3, 2001

Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon New England, Inc. d/b/a Verizon-Massachusetts.

ORDER ON SPRINT'S MOTION FOR RECONSIDERATION; MOTION TO ADMIT LATE-FILED EXHIBIT; MOTION FOR OFFICIAL NOTICE

APPEARANCES: Christopher D. Moore, Esq.
Craig Dingwall, Esq.
Sprint Communications Company L.P.
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
Petitioner

Bruce P. Beausejour, Esq.
Keefe B. Clemons, Esq.
Verizon New England, Inc. d/b/a Verizon-Massachusetts
185 Franklin Street, Room 1403
Boston, MA 02107
Respondent

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I. INTRODUCTION

On December 11, 2000, the Department of Telecommunications and Energy ("Department") issued on Order in the above-referenced arbitration[1] between Sprint Communications, L.P. ("Sprint") and Verizon New England, Inc. d/b/a Verizon Massachusetts[2] ("Verizon" or "Company") (collectively, "Parties") ("Sprint Order"). In the Sprint Order, the Department made findings necessary to finalize an interconnection agreement ("Agreement") between the Parties, and required the parties to file a completed interconnection agreement with the Department within 21 days of the date of the Order.

On January 2, 2001, Sprint filed a Motion for Reconsideration, in which it seeks reconsideration of seven issues: (1) reciprocal compensation and Internet traffic; (2) calling party number; (3) local calls over access trunks; (4) loop query information; (5) interconnection rates for access to Sprint's facilities; (6) resale of vertical features; and (7) proposed language regarding the Federal Communications Commission's ("FCC") UNE Remand Order.[3] On February 1, 2001, Verizon filed an Opposition to Sprint's Motion for Reconsideration.

On February 12, 2001, Sprint filed a Motion to Admit Late-filed Exhibit, and on February 20,

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1 This arbitration proceeding is held pursuant to the Telecommunications Act of 1996 ("Act"), 47 U.S.C. § 252.

2 Formerly, Bell Atlantic-Massachusetts.

3 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999) ("UNE Remand Order").

2001, Verizon filed an Opposition to Motion to Admit Late-filed Exhibit. In addition, on February 27, 2001, Sprint filed a Motion for Official Notice, to which Verizon filed an Opposition on March 7, 2001. In this Order, the Department will address each of Sprint's motions.

II. MOTION TO ADMIT LATE-FILED EXHIBIT

A. Introduction

In its Motion to Admit Late-filed Exhibit, Sprint requests that the Department admit into evidence a news release obtained from Verizon's Internet web site that describes two new services offered by Verizon in New York City.[4] Sprint asserts that the proposed exhibit is relevant to the resale of vertical features issue. See Section IV.H, below.

B. Standard of Review

The Department's Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

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[4] The two services offered in New York are Talking Call Waiting, which notifies a customer who is on the phone of the identity of another incoming caller, and Internet Call Manager, which notifies customers of incoming calls while they are on the Internet using the same phone line.

C. Position of the Parties

Sprint asserts that the proposed evidence is directly relevant to the resale of vertical features (Motion to Admit Late-filed Exhibit at 2). According to Sprint, the two services are the same, or very similar, to services that Sprint desires to offer by reselling Verizon's vertical features on a stand-alone basis (id.). In addition, Sprint states that good cause exists to admit the document into evidence, where the document was not available prior to the Motion for Reconsideration and where it is not unreasonable to admit the document because Verizon only recently submitted its response to Sprint's Motion for Reconsideration (id. at 3).

Verizon opposes Sprint's Motion to Admit Late-filed Exhibit. Verizon contends that Sprint's Motion should be denied because the information Sprint seeks to admit is not relevant to this proceeding (Opposition to Motion to Admit Late-filed Exhibit at 1). According to Verizon, it does not presently offer the referenced new services in Massachusetts, and the fact that Verizon offers these services in another state has no bearing on the issue of whether Sprint is entitled to obtain vertical features on a stand-alone basis at a resale discount in Massachusetts (id. at 2).

D. Analysis and Findings

As an initial matter, according to the Department's procedural rules and the Ground Rules in this Arbitration (Ground Rules, Section 7(a)), no party is allowed to submit evidence after the record is closed except upon a Motion to Reopen the Record and showing of good cause.[5] Parties are

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[5] The Department set forth its policy on late-filed exhibits in Boston Gas Company, D.P.U. 88-67, Phase II at 7 (1989). The Department found that a party's presentation of

(continued...)

prohibited from forwarding the proposed exhibit to the Department unless and until a Motion to Reopen the Record is granted. Sprint's filing of the proposed exhibit is, therefore, procedurally defective. Even if Sprint did not attach the proposed exhibit to its Motion to Admit Late-filed Exhibit, and assuming this serves as a Motion to Reopen the Record, the Department declines to grant Sprint's motion because we find that the proposed exhibit is irrelevant to this Arbitration. Whether Verizon is required to offer vertical features at wholesale turns on whether those services are properly classified as telecommunications services and whether Verizon offers those features at retail in Massachusetts, not New York. Thus, the proposed exhibit fails to meet the requirement that the exhibit is "likely to have a significant impact on the decision." See Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990). Accordingly, Sprint's Motion to Admit Late-filed Exhibit is denied.

III. MOTION FOR OFFICIAL NOTICE

A. Introduction

Sprint asks the Department to take official notice of a recent decision of the FCC concerning nondiscriminatory access to local directory assistance databases. According to Sprint, the FCC

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[5] (...continued)
extra-record evidence to the fact-finder long after the record has closed and after all briefs have been filed was an unacceptable tactic. The Department stated that once the record in a docket has closed, proper procedure requires that a party seeking to offer a late-filed exhibit or testimony move to reopen the record to introduce new evidence, and that only if such a motion were granted by the hearing officer, would it then be proper to present the exhibit or testimony itself.

decision might affect resolution of the issue of local service over access trunks. See Section IV.E, below.

B. Standard of Review

The Department's Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

C. Position of the Parties

Sprint asks that the Department take official notice of a recent decision by the FCC[6] that Sprint believes affects the local calls over access trunks issue currently pending before the Department (Motion for Official Notice at 2). According to Sprint, the FCC reached certain decisions on the definition of telephone exchange services relevant to the local dial-around product Sprint seeks to offer that is the subject of this proceeding. Sprint notes that the FCC made the determination that where a directory assistance provider completes a local call, and does not merely hand the call off to another

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6 Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket No. 99-273, First Report and Order, FCC 01-27 (rel. January 23, 2001) ("FCC DA Decision").

entity to complete the call, the services provided are telephone exchange services. Sprint argues that the FCC's call completion analysis applies to the analogous call completion aspects of Sprint's local-to-local dial-around product (id. at 3). If such services are considered telephone exchange services, they would be subject to reciprocal compensation, and not access charges (id. at 4). Sprint asserts that the FCC DA Decision was released after its Motion for Reconsideration was filed, and that good cause exists for the Department to take official notice of the decision (id. at 5).

Verizon argues that Sprint's Motion for Official Notice should be denied because the information Sprint seeks to admit is not relevant to this proceeding (Opposition to Motion for Official Notice at 1). Verizon contends that the FCC DA Decision does not support Sprint's argument (id. at 2). According to Verizon, even if the FCC DA Decision did support Sprint's argument, the issue before the Department is not whether the traffic in question is local, but whether it is eligible for reciprocal compensation, and the FCC DA Decision does not address that issue (id.). Verizon also notes that there is no record to support Sprint's assertion that the directory assistance services that are the subject of the FCC DA Decision are analogous to Sprint's dial-around service (id. at 2 n.2).

D. Analysis and Findings

Sprint's Motion for Official Notice fails for the same reasons as its Motion to Admit Late-filed Exhibit. Sprint fails to demonstrate good cause for opening the record to admit this exhibit because the information is irrelevant and therefore not likely to have a significant impact on the Department's decision. First, Sprint asserts that the situation where a directory assistance provider completes a local call is analogous to Sprint's proposed dial-around product. However, Sprint has not demonstrated

how the calling pattern ruled on by the FCC is analogous to Sprint's dial-around product. In addition, the issue of local calls over access trunks turns not on whether the calls are local calls (or telephone exchange service), but whether they meet the definition of calls that are eligible for reciprocal compensation under 47 U.S.C. § 252(d)(2). The FCC DA Decision did not address reciprocal compensation eligibility. Because the Department's decision on Sprint's Motion for Reconsideration is not based on whether the calls in question are local, the FCC DA Decision does not assist us in our analysis. Therefore, the Department denies Sprint's Motion for Official Notice.

IV. SPRINT MOTION FOR RECONSIDERATION

A. Introduction

As an initial matter, Sprint attached three exhibits to its Motion for Reconsideration.[7] However, because Sprint did not include a motion requesting that the Department include these documents in the record of this arbitration, and thus has not provided a basis for why the Department should do so, the Department cannot consider the three exhibits attached to Sprint's Motion for Reconsideration.

B. Standard of Review

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy

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[7] Exhibit 1 is a Public Utility Commission of Texas decision addressing an unreasonable restriction on resale. Exhibit 2 is a federal court decision on reciprocal compensation and traffic to Internet Service Providers ("ISP"). Exhibit 3 is a portion of a transcript from a California arbitration dealing with multi-jurisdictional traffic on a single trunk group.

on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

C. Definition of Local Traffic (Arbitration Issue No. 15)

1. Introduction

In the arbitration, the parties disagree on whether Internet service provider ("ISP")-bound

traffic should be included in the definition of local traffic. In the Sprint Order, the Department found that Verizon's definition of "local traffic" that states that ISP-bound traffic is not local, but interstate, for purposes of the 1996 Act's reciprocal compensation provisions, is reasonable, and adopted the language as proposed by Verizon. Sprint Order at 4-5.

2. Position of the Parties

Sprint argues two objections to the Department ruling on the definition of local traffic. First, Sprint contests Verizon's exclusion of Internet traffic from the definition of "local traffic." According to Sprint, Verizon's proposed language that states that local traffic does not include any Internet traffic is overbroad and inconsistent with the FCC ISP Ruling[8] (Motion for Reconsideration at 11). Sprint argues that the FCC ISP Ruling states that ISP-bound traffic is jurisdictionally mixed, and that the FCC did not rule that ISP-bound traffic does not contain any local traffic (id. at 12). Sprint recommends that the Department strike the proposed sentence "Local traffic does not include any Internet Traffic" from the interconnection agreement to remedy the problem (id.).

Second, Sprint contends that the Department mistakenly or inadvertently adopted Verizon's proposed definition of local traffic in its entirety, and not just with respect to the language dealing with ISP-bound traffic (id. at 10). Sprint argues that Verizon's proposed definition of local traffic is inconsistent with the FCC's definition of local traffic because it requires Sprint to be the originating

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[8] Local Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-38 (rel. February 26, 1999) ("FCC ISP Ruling").

carrier (id. at 15).

Finally, Sprint contends that a previous Department Order[9] requires that language governing reciprocal compensation in an interconnection agreement include (1) the 2:1 traffic ratio, and (2) the ability of the parties to negotiate their own compensation mechanism for ISP-bound traffic (id. at 13). Sprint asks the Department to include this language with the definition of reciprocal compensation in Sprint's interconnection agreement.

Verizon argues that Sprint's arguments regarding this issue are identical to arguments made earlier and rejected by the Department (Opposition to Motion for Reconsideration at 7). According to Verizon, the Sprint Order is consistent with the Act and the Department's previous rulings in which it has held that ISP-bound traffic is not local, but interstate for purposes of the Act's reciprocal compensation provisions (id. at 7-8). Verizon states that it already has included language regarding the 2:1 traffic ratio and the ability of the parties to negotiate their own mechanism for ISP-bound traffic, and therefore there is no basis to adopt Sprint's proposed language (id. at 8, citing Part V, Section 2.7.5 of Verizon's proposed interconnection agreement).

3. Analysis and Findings

Sprint's Motion for Reconsideration gives us no reason to reconsider our finding that the definition of local traffic properly excludes Internet traffic. The Department made no mistake: its finding is consistent with previous arbitration orders. See Greater Media/Bell Atlantic Arbitration,

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9 Greater Media/Bell Atlantic Arbitration, D.T.E. 99-52, at 9 (1999).

D.T.E. 99-52, at 8-9 (1999).[10] Sprint simply reargues it position from the arbitration. The Department will not reconsider its decision on this point.

Sprint also requests that the Department require Verizon to include language from the Greater Media/Bell Atlantic Arbitration regarding traffic over or under the 2:1 ratio in the definition of reciprocal compensation. However, Verizon has already included that language in proposed Section 2.7.5., defining reciprocal compensation arrangements.

Regarding Sprint's contention that the Department reject Verizon's proposed definition of local traffic for purposes of reciprocal compensation because Verizon assumes that Sprint must be the originating carrier, this particular subject was raised in the arbitration under Arbitration Issue No. 17. The Department addresses this issue in Section IV.E., below.

D. Calling Party Number (Arbitration Issue No. 16)

1. Introduction

The parties dispute the rates to be applied should an originating carrier fail to transmit calling party numbers ("CPN") to a terminating carrier at defined minimum levels.[11] In the Sprint Order, the Department decided that if either carrier fails to transmit CPN on less than 90 percent of its originating

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[10] Although Department arbitration decisions are not necessarily binding on subsequent arbitrations, where fact patterns are the same, the Department can use an existing arbitration decision as a guide in deciding subsequent arbitrations. Moreover, Sprint itself argues for consistency with the Greater Media/Bell Atlantic Arbitration Order.

[11] The transmission of CPN by the originating carrier to the terminating carrier is necessary for both parties to determine whether the calls should be billed at local, intraLATA, or interLATA rates.

calls, the other carrier has the right to bill calls without CPN at the interstate switched exchange access rate. Sprint Order at 7. Citing the unduly burdensome nature of a manual review of alternative calling records, the Department denied Sprint's proposal to allow for "true up" reconciliation of invoices when a carrier's CPN transmission falls below the 90 percent threshold. Id.

2. Positions of the Parties

Sprint requests that the Department reconsider this decision and allow for a "true up" reconciliation of invoices in the event a carrier falls below the 90 percent threshold for transmission of CPN (Motion for Reconsideration at 28). According to Sprint, the Department through mistake or inadvertence denied Sprint's right to a "true up" (id.). Sprint contends that there is no basis in the record for the Department's finding that such a true up based on alternate calling records would be unduly burdensome (id.).

Verizon disputes Sprint's claim that the burdensome nature of manual true up is unsupported by the record (Opposition to Motion for Reconsideration at 16). Verizon states that it explained on the record the unreasonableness of Sprint's position that Verizon utilize a manual process in connection with CPN and the additional financial and administrative burdens that it would impose on Verizon (id.). Verizon contends that the Department's decision is reasonable and supported by the record, and that Sprint has failed to provide any reason why the Department should reconsider its decision on this issue (id.).

3. Analysis and Findings

Sprint challenges the Department's conclusion that a manual review of alternative calling

records (in order to determine the local component of calls between the companies in the event CPN is not available to identify that local component) would be too burdensome. The Department's conclusion was not the result of mistake or inadvertence. While Sprint is correct that neither party established an evidentiary record that quantifies the amount of effort necessary to identify local versus non-local traffic passing between the carriers without the aid of CPN, a manual review of call records between two carriers, especially carriers with the potential for exchange of a substantial amount of traffic as the parties here, is a resource-intensive process.[12] See Verizon Tariff No. 17 Order, D.T.E. 98-57, at 178-182 (2000) (necessity for electronic call detail records with CPN). The Department may rely on facts that were not supported by evidence presented in a particular administrative proceeding where such facts are based on the agency's expertise and judgment. American Paging, Inc., D.P.U. 88-132, at 13 (1989). Sprint's Motion does not meet the standard for Reconsideration on this matter, and, therefore, is denied.

E. Local Calls Over Access Trunks (Arbitration Issue No. 17).

1. Introduction

The Parties dispute whether Sprint should pay reciprocal compensation or interexchange access rates when access trunk facilities are used for combined local and toll traffic. In the Sprint

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[12] The Department notes that Sprint's Motion for Reconsideration does not dispute the Department's conclusion that manual review of call records would be burdensome.

Order, the Department ruled that Sprint is required to pay applicable access rates when it handles calls through dial-around methods.[13] Sprint Order at 11. The Department stated that the situation addressed in this dispute does not fall within the limits of reciprocal compensation as defined by the FCC, because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism.[14] Id.

2. Position of the Parties

Sprint asks that the Department reconsider its decision based on two alleged errors. First, Sprint alleges that through mistake or inadvertence the Department misread the record in finding that this issue affects a small percentage of calls because there is no basis for this finding in the record (Motion for Reconsideration at 6). Sprint forecasts the frequency of dial-around calls to "dramatically increase" if Sprint's new offering is successful (id.). Furthermore, Sprint contends that the jurisdictional nature of these calls, not the frequency, should govern whether reciprocal compensation should apply

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[13] Sprint intends to offer customers the ability to dial-around Verizon local service and select Sprint to switch and route their local calls on a call-by-call basis via a specified calling pattern. Sprint Order at 9.

[14] In the Sprint Order at 11, the Department stated that the issue affects a small percentage of calls, specifically those calls in which a Verizon customer uses a Sprint dial-around option to place a call to another Verizon customer in the same local calling area. The issue is limited to this scenario because any call placed between a Verizon customer and a Sprint customer in the same local calling area (except ISP-bound traffic) would be subject automatically to reciprocal compensation regardless of the facilities over which the call is carried. Id., citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, at ¶ 1034 (1996). Further, calls between two Sprint customers in the same local calling area over Sprint's network facilities would not be subject to reciprocal compensation (or any type of inter-carrier compensation). Id.

(id.).

Second, Sprint alleges that through mistake or inadvertence, the Department misread the definition of local traffic subject to reciprocal compensation (id. at 7). Sprint states that the determinative factor for when a call is local is if the call is completed in the same local calling area, and that the FCC definition of local traffic contains no requirement that Sprint be the originating carrier (id.). According to Sprint, the proposed service involves two carriers collaborating to complete a local call, which is the type of service to which reciprocal compensation should apply (id. at 8). Sprint also contends that the FCC rules provide that the local exchange carrier may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the ILEC's network (id.)

Verizon states that the Department correctly determined that Sprint should be required to pay Verizon access charges where Sprint transports calls that originate and terminate on Verizon's network (Opposition to Motion for Reconsideration at 6). Verizon dismisses Sprint's focus on the number of calls at issue, stating that the number of calls is completely irrelevant to whether the calls should be subject to reciprocal compensation (id. at 6 n.2).

Verizon frames the issue decided by the Department in the Sprint Order more narrowly than Sprint. According to Verizon, the Department decided the appropriate charges for local calls transported over access trunks that originate and terminate on Verizon's network (id. at 6). Verizon argues that because the FCC reciprocal compensation rules require Sprint to be the originating carrier in the arrangement at issue in this arbitration, and it is undisputed that Sprint is not the originating carrier

for the dial-around calls, the dial-around calls do not fall within the FCC's definition of reciprocal compensation (id. at 6-7). Finally, Verizon contends that Sprint's Motion for Reconsideration on this point simply reargues claims Sprint made during the arbitration, and fails to establish grounds for reconsideration (id. at 7).

3. Analysis and Findings

Regarding the Department's finding that the issue here affects a small number of calls, that finding was not the basis of the Department's decision in this matter. The Department based its decision on the limits of reciprocal compensation as defined by the FCC. Therefore, reconsideration of this point would have no "significant impact on a decision already rendered," and reconsideration is not warranted.

Sprint also asks the Department to reconsider its decision to require Sprint to pay access charges for local calls. Sprint misstates the Department's decision. In the Sprint Order, the Department ruled that the dial-around option proposed by Sprint, which uses Sprint's access trunks, does not fall within the definition of services for which reciprocal compensation is allowed by the FCC rules. See 47 C.F.R. § 51.701(e). This rule clearly requires call origination on one carrier's network, and termination on the other carrier's network. Sprint does not establish a mistake that must be reconsidered. Therefore, the Department denies Sprint's Motion for Reconsideration on this issue.

F. Loop Query Information (Arbitration Issues Nos. 11, 12, and 18)

1. Introduction

Sprint challenges the Department's finding on parity access to all digital loop concentrator[15] ("DLC") information.[16] In the Sprint Order, the Department noted that the issue of parity access to DLC information was not raised by Sprint until late in the proceeding, and Sprint did not provide the Department with a detailed list of the information sought; as a result, the record on this issue was not well developed. Sprint Order at 13. The Department found that while the FCC explicitly contemplated that CLECs would require some information about DLCs and other remote concentration devices, the FCC appears to have limited access to information concerning the "...existence, location, and type" of remote concentration devices. The Department concluded that the information sought by Sprint goes beyond what is required by the UNE Remand Order, and did not require Verizon to provide Sprint with the additional information. Id. at 14.

2. Position of the Parties

As an initial matter, Sprint denies that this issue was raised late in the proceeding, and states that the issue was raised in its Petition for Arbitration (Motion for Reconsideration at 17). Sprint also denies that the record is not well developed on this issue, and states that it provided testimony to the Department on the matter, and provided a detailed list of the information it seeks to Verizon (id. at 18).

Sprint alleges that the Department misinterpreted the UNE Remand Order. According to Sprint, the UNE Remand Order identified a minimum of information that must be made available by

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15 The Department assumes that Sprint is using the terms "digital loop concentrator" and "digital line concentrator" synonymously with "digital loop carrier."

16 DLC are field-located terminals that concentrate subscriber loops onto a high speed, fiber connection to the central office (Exh. Sprint-2, at 22).

Verizon (Motion for Reconsideration at 20). Sprint asserts that the obligation to make available operations support systems ("OSS") in a non-discriminatory manner extends to all information needed to determine whether a particular loop can support advanced services (id.). Sprint contends that it has a right to any information that exists in the incumbent's back office that can be accessed by the incumbent's personnel (id.). Sprint further alleges that the record establishes that the loop information[17] sought by Sprint is critical for determining the economic and technical feasibility of collocating with DLC units to deliver DSL service (id.). Sprint urges the Department to require Verizon to provide this information apart from pre-ordering and ordering data, well before Sprint places an order for a particular loop or subloop serving a particular customer (id. at 22-23).

Verizon again argues that the Department should reject Sprint's request because Sprint reargues issues previously raised and addressed in the arbitration (Opposition to Motion for Reconsideration at 9). According to Verizon, neither the Act nor the FCC rules require Verizon to provide access to every piece of information that Verizon has related to its DLC facilities; instead the FCC's rules govern the provision of "loop qualification information," information CLECs need to ascertain whether specific ILEC facilities are suitable for an intended CLEC use (id. at 9-10). Verizon asserts that is has included provisions in its proposed interconnection agreement with Sprint and its Tariff No. 17 that meet the FCC's requirements (id. at 10). Verizon further asserts that it has already

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[17] Sprint asserts that the type of information it seeks includes how many customers are served by each remote terminal, what type of equipment is located in the remote terminal, and whether there is any space available within the remote terminal for collocation (Motion for Reconsideration at 21).

agreed to provide Sprint with the information it needs to determine whether Verizon's loops are qualified for Sprint's intended use, and that it is not required to provide additional information for Sprint's marketing efforts (id. at 10-11).

3. Analysis and Findings

Sprint disagrees with the Department's findings about how and when the record was developed on its request for loop query information. The Department notes that Sprint did raise a general request for parity access to loop information in an affidavit attached to its Petition. However, the affidavit states that the information provided by Verizon's current loop qualification is insufficient because it may or may not have any relevance to industry standard Carrier Serving Area specifications, but raises nothing specific to DLC (Sprint Petition for Arbitration, Exhibit 5 at ¶¶ 7-12). Sprint did not raise the issue of access to DLC information until Nelson's testimony, where Sprint asks for "very specific information" on DLCs and access to Verizon's engineering records. In addition, Sprint did not provide the Department with a list of the information it seeks from Verizon until its Motion for Reconsideration. Therefore, the Department was not apprised of the specific information on DLCs sought by Sprint until after the close of the record in this arbitration. This information was available to Sprint, and could have been provided by Sprint, before the close of the arbitration. Therefore, it does not meet the requirement that reconsideration be based on "previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered." See Section IV.B., above. The Department's conclusion that the record on this matter was not well developed was not based on

mistake or inadvertence.[18]

The Department has previously addressed the issue of what information Verizon is required to provide through its loop qualification database. The Department approved in the Tariff No. 17 proceeding the information that Verizon makes available through its mechanized database. See D.T.E. 98-57-Phase III, at 94 n.65.[19] In addition, the FCC recently found that Verizon's loop qualification process complies with the UNE Remand Order.[20,21] In this Order, the FCC rejected the same argument that Sprint makes here, that Verizon fails to meet its obligations under the UNE Remand Order because it does not provide unfiltered access to information about its DLC facilities. Verizon Massachusetts Order at ¶ 69. Thus, we affirm our finding that Verizon provides the loop qualification information that is required by federal rules. Sprint provides the Department with no reason for us to

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18 Indeed, even with the list of requested information provided by Sprint in its Motion for Reconsideration, it is still unclear to the Department what information Sprint needs that it cannot obtain through the various methods of gathering loop information that are already available to it.

19 According to Verizon's tariff, the mechanized pre-qualification database provides the following information: total metallic loop length (including bridged taps, presence of load coils, presence of DLC facilities, presence of interferors, presence of digital single subscriber carrier), and qualification for ADSL/HDSL per Verizon standards. Part B, Section 5.4.2.A.1.

20 Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, at ¶ 60 (rel. April 16, 2001) ("Verizon Massachusetts Order").

21 Specifically, the FCC noted that Verizon makes the following DLC information available: (1) an indication that DLC equipment is present on the facility for which loop make-up has been requested; and (2) the type of DLC equipment present. Verizon Massachusetts Order at ¶ 69.

impose additional loop qualification obligations on Verizon.[22]

Regarding Sprint's request that Verizon provide DLC information outside the pre-ordering and ordering systems, the FCC requires loop qualification information be provided as part of the pre-ordering function. 47 C.F.R. § 51.319(g); see also Verizon Massachusetts Order at ¶ 54. We will not require Verizon to provide this information apart from the pre-ordering function.

G. Interconnection Rates for Access to Sprint's Facilities (Arbitration Issue No. 6)

1. Introduction

Sprint challenges the Department's findings on the rates that Verizon must pay Sprint to interconnect with Sprint's facilities. In the Sprint Order, the Department held that under the Act and state telecommunications statutes, the Department is required to determine the reasonableness of CLEC interconnection rates as well as the reasonableness of ILEC interconnection rates. Sprint Order at 17. CLEC rates must either be agreed-to through negotiation, be cost-justified, or CLECs may use Verizon's rates as a proxy. However, where a CLEC fails to negotiate a rate with Verizon and refuses to use Verizon's rates as a proxy, the Department noted that the CLEC must submit supporting documentation for its rates. In the Sprint Order, the Department determined that, unless Sprint either uses Verizon's rates as a proxy or negotiates with Verizon for other rates, it is necessary to investigate Sprint's proposed interconnection rates, and directed Sprint to file the cost information on which its

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[22] In addition, pursuant to Verizon's Tariff No. 17, Sprint may obtain certain information regarding remote terminals upon request through Verizon's Collocation at Remote Terminal Equipment Enclosures offering. See M.D.T.E. No. 17, Part E, Section 11.1. The information includes the range of customer addresses served by the remote terminal, the type of enclosure, and whether there is adequate space to accommodate collocation at the remote terminal.

rates are based.[23] Id. at 18.

2. Position of the Parties

Sprint argues that through mistake or inadvertence, the Department misreads 47 U.S.C. §§ 251(a)(1), 252(d)(1), and that these sections do not require that the Department determine the reasonableness of CLEC interconnection rates or that CLEC rates be cost-justified (Motion for Reconsideration at 24). Sprint also contends that the Department, through mistake or inadvertence, failed to consider that adopting a rate cap for Sprint in this arbitration violates § 253 of the Act, which requires state requirements to be imposed on a competitively neutral basis (id. at 25). According to Sprint, no other CLEC in Massachusetts is currently subject to a rate cap, and the Department's imposition of a rate cap is discriminatory (id.).

Finally, Sprint alleges that the Department, through mistake or inadvertence, failed to cite any evidence that Sprint's interconnection rates are unreasonable, thus justifying the imposed rate cap (id. at 26). Sprint contends that the record contains no evidence that Sprint's interconnection rates are unreasonable (id.). Sprint urges the Department to reject Verizon's rate comparison because Sprint claims the comparison is improper and inaccurate (id. at 27).

Verizon argues that the Department's decision in this matter is supported by the Act and independently by Massachusetts law (Opposition to Motion for Reconsideration at 14). Verizon states that the Department has independent authority under state law to take steps to assure that the rates

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[23] Sprint asks that it not be required to file cost information as directed in the Sprint Order until the Department resolves this Motion for Reconsideration. The Department grants this request.

charged by telecommunications carriers in the state are reasonable (id., citing G.L. c. 159, §§ 12, 14, and 17). Verizon points out that the Department did not make a finding that Sprint's rates are unreasonable; rather the Department required Sprint to support the rates it proposes to charge (id. at 15). In addition, Verizon contends that the Department did not impose a rate cap on Sprint, or any other carrier, and that the Department's decision to require Sprint's rates to be reasonable is competitively neutral because all telecommunications carriers in Massachusetts must charge reasonable rates (id.).

3. Analysis and Findings

In its Motion for Reconsideration, Sprint argues that the Act does not require the Department to determine the reasonableness of CLEC interconnection rates or that CLEC rates be cost-justified. However, § 251(a)(1), which obligates telecommunications carriers to interconnect, carries with it an implicit obligation to charge reasonable rates for that interconnection. In addition, Sprint does not address the independent authority vested in the Department to ensure that rates charged by common carriers are just and reasonable. See Sprint Order at 17, citing G.L. c. 159, §§ 12, 14 and 17. This requirement extends to all common carriers in Massachusetts, including Sprint.

The Department made no mistake requiring Sprint to charge reasonable rates for interconnection, because Verizon must interconnect with any CLEC that requests interconnection pursuant to the Act, and Sprint is likewise required to charge reasonable rates for interconnection. See Sprint Order at 17; accord AT&T Broadband/Verizon Arbitration, D.T.E. 99-42/43 (2001) (setting rates for transport); IntraLATA Competition, D.P.U. 94-185 (1996) (setting rates for termination).

Regarding Sprint's arguments that the Department's action violates 47 U.S.C. § 253, this is a reargument of issues in the arbitration, and therefore fails the standard for reconsideration.[24] Likewise, Sprint's argument that the record does not support a finding that Sprint's interconnection rates are unreasonable is also an issue raised in the arbitration.[25] As a reargument of an issue in the arbitration, Sprint again fails the standard for reconsideration. Accordingly, Sprint's Motion for Reconsideration on this point is denied.

H. Resale of Vertical Features (Arbitration Issue No. 9)

1. Introduction

In the Sprint Order, the Department held that Verizon is not required to offer vertical features [26] at the wholesale discount rate on a stand-alone basis because such services (e.g., Custom Calling Features) are offered only in conjunction with its basic exchange service. Sprint Order at 22.

2. Position of the Parties

Sprint alleges that the Department, through mistake or inadvertence, failed to acknowledge that Verizon's vertical features and local service are separately tariffed offerings, and that it is technically

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[24] The requirement that interconnection rates be reasonable is applicable to all local exchange carriers in Massachusetts. Therefore, the Department's requirement that Sprint charge reasonable interconnection rates does not discriminate against Sprint.

[25] The Department notes that Sprint has the burden to prove that its rates are reasonable. Sprint may avail itself of the opportunity to do so.

[26] Vertical features, also referred to as "Custom Calling Services" by Verizon, are such services as call waiting, call forwarding and three-way calling. See M.D.T.E. No. 10, Part A, Section 9, Page 28.

feasible to offer vertical features separate from Verizon's local service (Motion for Reconsideration at 3). Sprint states that Verizon's practice of making its vertical features available only with the purchase of its local service is an impermissible restriction on resale (id.). Sprint points to decisions in California and Texas requiring certain vertical services to be offered separately on a wholesale basis (id. at 3-5).[27]

Verizon contends that the arguments made by Sprint in its Motion for Reconsideration are identical to the arguments made in the arbitration (Opposition to Motion for Reconsideration at 3). Verizon further argues that it is undisputed that Verizon does not provide Custom Calling Features or vertical features generally on a stand-alone basis to its retail customers and that such services are offered only in conjunction with the purchase of a basic dial-tone line (id. at 4). In addition, Verizon contends that even if the requirement that Sprint purchase for resale the local exchange line in order to purchase for resale the vertical features could be viewed as a limitation, it is reasonable, non-discriminatory and narrowly tailored to comport with the requirements of the Act (id.). According to Verizon, retail customers cannot obtain vertical features without the underlying exchange line because they cannot use the features without the line (id.). Finally, Verizon argues that the California and Texas decisions are not binding on the Department (id. at 5).

3. Analysis and Findings

As an initial matter, Verizon has established on the record that it does not offer the features Sprint is requesting at retail on a stand-alone basis (Exh. VZ-MA at 4). Sprint's assertion that

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[27] The Department will not consider these two decisions in its Order here, as they are not properly before the Department. See Section IV.A., above.

Verizon's vertical features are separately tariffed from its local service (i.e., appear in different locations in the tariff) does not alter the fact that the vertical features in question cannot be purchased separately at retail. In addition, Sprint's argument on this point is a repeat of the argument Sprint made in the arbitration. Furthermore, whether it is technically feasible to offer vertical features separately is not the standard for resale; the standard is whether Verizon offers the particular telecommunications service at retail. The Department reaffirms its decision in the arbitration. Thus because Verizon does not offer vertical services at retail on a stand-alone basis,[28] the Act does not require it to offer these services at the wholesale discount.

Sprint's argument that Verizon, by offering vertical features only in conjunction with local service, imposes a impermissible restriction on resale in contravention of the Act, is a repeat of the same argument from the arbitration. The Department rejected Sprint's argument in the arbitration and found that Verizon's refusal to offer vertical features on a stand-alone basis to Sprint does not violate the Act or the FCC's local competition rules. Sprint Order at 22. Sprint fails to provide justification for reconsidering that conclusion.

I. UNE Remand Order

1. Position of the Parties

Sprint argues that the Department, through mistake or inadvertence, failed to rule on certain issues relating to the UNE Remand Order (Motion for Reconsideration at 28). Sprint requests that the

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[28] The FCC stated that § 251(c)(4) does not impose on ILECs the obligation to disaggregate a retail service into more discrete retail services. Local Competition Order at ¶ 877.

Department adopt its proposed language for arbitration issue 18 (id. at 29).

Verizon states that it has agreed to provide Sprint with Unbundled Network Elements ("UNE") in accordance with applicable law, and that Sprint's proposed language is unnecessary (Opposition to Motion for Reconsideration at 17). Furthermore, Verizon contends that the terms, conditions and limitations under which Verizon must provide UNEs have been extensively addressed by the FCC and the Department, and should not be relitigated in this arbitration (id.).

2. Analysis and Findings

As an initial matter, Sprint is correct that the Department failed to rule on Sprint's proposed language relating to the UNE Remand Order identified in the arbitration as arbitration issue 18. To the extent that the Department overlooked Sprint's request to rule on its proposed language, the Department grants Sprint's request.

The language that Sprint proposes to add to the interconnection agreement relates to the following sections in Part II of the proposed interconnection agreement: Line Conditioning (section 1.2.15), Packet Switching Capability (section 1.2.16), Call-Related Databases (section 1.2.16), Subloop (section 1.2.10), Subloop Element (section 1.2.16), and Dark Fiber (section 1.2.11).[29] In each section, Sprint's proposed language comes verbatim from regulation 47 C.F.R. § 51.319 (with the exception of instances where Sprint substituted Verizon's name for ILEC, or the Department's name for state commission), which was adopted in the UNE Remand Order. Therefore, Sprint's proposed

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[29] Sprint also requests to add language to Parity Access to Loop Information (section 1.6). The Department addressed this issue in Section IV.F, above.

language recites existing law on these issues. While Sprint's proposed additions are in accordance with the law, we note that they are redundant, since Verizon has an independent obligation to comply with the FCC regulations regarding UNEs. Therefore, we decline to adopt Sprint's proposed language.

V. ORDER

After due consideration, it is

ORDERED: That Sprint's Motion to Admit Late-filed Exhibit is hereby denied; and it is

FURTHER ORDERED: That Sprint's Motion for Official Notice is hereby denied; and it is

FURTHER ORDERED: That Sprint's Motion for Reconsideration is hereby denied; and it is

FURTHER ORDERED: That the parties incorporate the determinations herein into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within 21 days of the date of this Order.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner